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# The writings against the adoption of the constitution

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THE WRITINGS  
AGAINST THE ADOPTION OF  
THE CONSTITUTION

History 318

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by

Henry E. Cake

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## OUTLINE

### Introduction

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- c. Massachusetts
- d. North Carolina
- e. South "
- f. Rhode Island
- g. Delaware

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For a group of people who had fled their home countries to get away from tyranny and political and religious oppression, the step towards forming a national government was a great one. Their new homes were built around governments based on the "states rights" idea which gave supreme power to each individual state government. This power covered taxes, imposts, duties, etc. on property and imports, and the gathering of a militia when needed.

The Articles of Confederation did not change the "states rights" idea for it was a loosely formed connection between the several states depending on the consideration of the various state legislatures in putting over any suggestions made by the officers of the Confederation. It had no coercive power that could make the states come through with money and men when needed and, as we all know, that reason alone almost lost our fight for independence.

It is small wonder then that when delegates were sent to Philadelphia to consider forming a national or federal government that would be the supreme power binding the thirteen states together into one great unit that there was opposition to the formulation of a constitution and even greater - or at least more numerous - objections to phraseology and fundamental ideas of each article at every step of the formulating process. While there were one or two of the opposition who appear as cranks and chronic objectors, it seems that most of the members of the

opposition to the adoption were very sincere and while time has proved their objections to be more or less unfounded - to them they were very real.

Among those objectors were Governor Edmund Randolph, George Mason, Tyler, and Patrick Henry of Virginia; Governor George Clinton, Robert Yates, Lansing, Tredwell, and Harrison of New York; Elbridge Gerry, Rufus King and Barrell of Massachusetts; from North Carolina there was William Richardson Davie, Willie Jones from the national convention and Lancaster, Locke, Lenoir, Miller, Bloodworth, and Spencer from the state convention; South Carolina had the Pinckneys as their main oppositionists.<sup>1</sup> Then, too, there was Mr. Collins and Arnold of the Rhode Island convention and the Delaware delegates to the national convention - George Read, Richard Basset, and Jacob Broom.<sup>2</sup> While all of these men opposed the constitution either at the national convention or in their state conventions, there seems to be little available material on their opinions in actual writing. The records of the debates in the Philadelphia convention and in the various states' conventions are, of course, full of opinions.

Most of the letters that were written are dated either during the convention or afterwards when the legislatures of the states were being canvassed for a complete acceptance of the constitution as it was formed at Philadelphia. This would

1 - Elliot, Debates II 166 ff.

~~xxxxxxx Elliot xxxxxxxx~~

2 - Elliot, Debates, I, 382.

point to the fact that the delegates were ~~xxx~~ sent to the convention full of hope from their states. However, they were not a group starting into something concerning which they didn't have a full realization. The delegates from the small states knew that some method must be devised by which they might cope with the larger, more powerful states. "Those of Delaware were expressly instructed to agree to no system which should take away from the states that equality of suffrage secured by the original articles of confederation."<sup>3</sup>

Among those who first became dissatisfied were the members representing New York. Its not surprising, then, to note that as early as 1781 that Gov. George Clinton had disapproved of the legislative grant to congress of the import duties being collected in the port of New York. In 1783 he secured the passage of a law that sent the duties to congress, but had them collected by state officers.<sup>4</sup> His objections were shared by<sup>5</sup> the administration of Rhode Island.

Clinton was against national government because he realized the advantageous position of New York commercially and thought a union would be too great a sacrifice compared to the gain derived.<sup>6</sup> In order to express his opposition to the convention the governor wrote seven letters under the pen name of "Cato!" These letters were published in the New York Journal from Sept. 1787 through the following January.<sup>7</sup> The first of these letters appeared the very day the new Constitution was first printed in New York. They brought forth even more famous replies called "The Federalist" letters written by Hamilton, Madison,

3 - Ibid.

4 - Malone, Dict. of Amer. Biog., IV, 226.

and Jay. The Governor's letters were dull and ponderous, yet they show much better than "The Federalist" what men were thinking and saying,

"Cato" urged against undue hastes in making a decision. At the end of the Revolution Americans astounded the world by establishing "an original compact" between themselves and their governors, and that compact should not be lightly put aside, said Clinton. "We did not throw off the yoke of Britain only to find new masters! If we do not approve the constitution, we are under no obligations to accept it: ....

"The new plan creates one sovereignty, a consolidation of states in one government....."

Clinton had a number of more specific objections to the plan evolved by the Philadelphia Convention. There were too few representatives, the senatorial term of six years was much too long, the necessity for annual elections was ignored, standing armies might be established, and the vice-president - an unnecessary office - improperly blended the legislature and executive powers that should have been kept separate. The presidency itself savored too much of monarchy. The president's term was too long. Clinton, like Jefferson, always believed that only an agricultural civilization could remain sound and virtuous.

5 - Elliot, Debates, I, 131.

6 - Malone, op. cit, 227.

7 - Ibid.

8 - Spaulding, Geo. Clinton, 172 ff.



Other noted delegates from New York were Robert Yates and Lansing. Yates, and Anti-federalist, with Clinton opposed such concessions to the Federal Congress as right to collect impost duties.<sup>9</sup> He and Lansing left the convention at Philadelphia on the day that the committee reported, July 5th, on the grounds that the convention was exceeding its powers in attempting to write a new instrument of government and that a national state would impair the sovereignty of New York.<sup>10</sup>

After the publication of the constitution, Yates attacked it during the winter in a series of letters signed "Brutus" and in June 1788 in letters signed "Sydney" which appeared in the New York Journal.<sup>11</sup> In a letter dated July 1787 addressed to Governor Clinton of New York, Yates and Lansing explained their leaving the convention.

"..... Our powers were explicit, and confined to the sole and express purpose of revising the Articles of Confederation, and reporting such alterations and provisions therein, as should render the federal constitution adequate to the exigencies of government, and the preservation of the union.

"..... Exclusive of our objections originating from the want of power, we entertained an opinion, that a general government, however guarded by a declaration of rights, or cautionary provisions, must unavoidably, in a short time, be productive of the destruction of the civil liberty of such citizens who could be effectually coerced by it: ..."<sup>12</sup>

9 - Malone, Dict. of Amer. Biog., XX, 601.

10- Ibid.

11- Malone, op. cit., 602.

12- Farrand, Records, III, 244-47.

Another of the northern delegates who also was acting as a delegate from one of the large states was Elbridge Cerry, He was one of the chronic objectors frequently changing his mind, sometimes for personal reasons, and showed an "obstinacy that will risk great things to secure small ones." He proved lacking in a sense of humor and showed an habitual suspicion of the motives of ~~the~~ others. His most consistent objections were the lack of a bill, of rights in the constitution and the implied power of congress to create corporations. <sup>13</sup>

In order to explain his opposition to the constitution, Gerry wrote a note to, the president of the Senate and Speaker of the House of Representatives of Massachusetts dated New York October 18, 1787. It reads in part as follows:

"..... To this system I gave my dissent, and shall submit my objections to the honourable legislature.

"..... My principal objections to the plan, are, that there are no adequate provisions for a representation of the people - that they have no security for the right of election - that some of the powers of the legislature are ambiguous, and others indefinite and dangerous - that the executive is blended with, and will have an undue influence over, the legislature - that the judicial department will be oppressive - that treaties of the highest importance may be formed by the president with the advice of two-thirds of a quorum of the senate - and that the system is without the security of a bill of rights. These are objections which are not local, but apply equally to all the states.

"..... I did not conceive that these powers (of revising the articles of confederation) extend to the formation of the plan proposed: ....."<sup>14</sup>

In Virginia was the tea-pot of the opposition. The most notable of the opposers were George Mason, Edmund Randolph, Patrick Henry, and Richard Henry Lee

On a draft of the constitution printed September 12th, George Mason made the following marginal notes which were dated September 15th.

1. No declaration of rights.
2. People not protected by the common law.
3. Only a shadow of representation in the house.
4. Senate having power of altering all money bills, and of originating appropriations of money, and the salaries of the officers of their own appointment.
5. These with their other powers will enable them to usurp as they please the rights and liberties of the people.
6. Judiciary so constructed as to absorb and destroy those of the states.
7. President having no constitutional council leaving him without proper information and advice.
8. Danger of vice-president as president of the senate.
9. President unrestrained power of pardon for treason.
10. Executive and senate have by declaring all treaties supreme laws - in many cases exclusive power of legislation.
11. The requiring of only a majority in making commercial and navigation laws - the five southern states may be ruined.
12. General clause at end of enumerated powers of congress leave state legislature no security nor people their rights.
13. No declaration of any kind preserving liberty of the press, trial by jury in civil cases, nor against danger of standing armies in peace.

14. State legislatures restrained from laying export duties on their own produce.
15. Both legislatures (general & state) prohibited from making ex post facto laws.
16. This government will set ~~xxx~~ out a moderate aristocracy - possible monarchy or corrupt, tyrannical aristocracy.
17. General legislature restrained from prohibiting the further importation of slaves for 20 odd years.<sup>15</sup>

Mason received a final draft of the constitution from President Washington for his approval. He replied to this letter in one from Gunstan Hall dated October 7, 1787.

"I take the liberty to enclose you my objections to the new constitution of government, which with a little Moderation & Temper, in the latter End of the Convention, might have removed. I am, however, most decidedly of Opinion, that it ought to be submitted to a Convention chosen by the People, for that special purpose; and shou'd any Attempt be made to prevent the calling such a Convention here, such a Measure shall have every Opposition in my Power to give it. You will eadily observe, that my Objections are not numerous ...<sup>16</sup> tho' in my mind, some of them are capital ones."

Edmund Randolph in a letter to Beverly Randolph from Philadelphia dated September 18, 1787 said:

"..... Altho' the names of Colo. Mason and myself are not subscribed, it is not, therefore, to be concluded that we are opposed to its adoption. Our reasons for not subscribing will be better explained at large, and on a personal interview, than by letter."<sup>17</sup>

15 - Farrand, Records, II, 637.

16 - Farrand, Records, III, 102.

17 - Farrand, op. cit., 83.

Then again in a letter to the Speaker of the Virginia House of Delegates with the date line of Richmond, October 10, 1787, he submitted five objections. These were:

1. That the constitution was to be submitted to the states to take or leave - no amendments.
2. Every citizen through representatives should have amending power. If it was signed this fact would be contradicted.
3. Constitution should have people behind it. No amendments - dissatisfaction. He would not later have been able to justify himself.
4. Knew changes would have to be made for safety's sake.
5. People might not only reject constitution, but bid lasting farewell to the union.<sup>18</sup>

It was said that "Henry was probably more responsible than any others for the adoption of the first ten amendments to the Federal Constitution."<sup>19</sup> This would show the powerful influence that Patrick Henry of Virginia had over the thought concerning the constitution. In a letter to George Washington from Richmond of October 19, 1787 he said, ".... I have to lament that I cannot bring my mind to accord with the proposed Constitution. The concern I feel on this account is really greater than I am able to express." In this letter he listed his objections as: the balance of power was destroyed, there was a want of responsibility, a fear of the executive patronage, insufficient checks, bill of rights not included, the method of impeachment, the term of the president, the implied powers, and tendency to monarchy.<sup>20</sup>

18 - Farrand, op. cit., 123 ff.

19 - Malone, Dict. of Amer. Biog., VIII, 558.

20 - Henry, Patrick Henry, III, 301.

Of all the Virginians opposing the constitution there was none stronger than Richard Henry Lee. He was the second delegate to be named in the group from this state. He stated that "The first maxim of a man who loves liberty should be never to grant to Rulers an atom of power that is not most clearly & indispensably necessary for the safety and well being of Society."<sup>21</sup>

In a letter to George Mason from New York where he was attending a meeting concerning the Northwest Territory he wrote, "I have waited until now to answer your favor of ~~the~~ September 10th from Philadelphia, that I might inform you how the Convention plan of government was entertained by Congress. Your prediction of what would happen in Congress was exactly verified. It was with us, as with you, this or nothing; and this urged with a most extreme intemperance. the greatness of the powers given, and the multitude of places to be created produce a coalition of monarchy men, military men, aristocrats and drones, whose noise, impudence and zeal exceeds all belief....."

"As it is, I think 'tis past doubt, that if it should be established, either a tyranny will result from it, or it will be prevented by a civil war....."<sup>22</sup>

Then a day after writing he wrote to Dr. William Shippen, Jr., (also from New York - this dated Oct. 2, 1787), "I have considered the new constitution....., & I find it

21 - Malone, Pict. of Amer. Biog., XI, 120.

22 - Ballagh, Letters of Richard Henry Lee, II, 438.

impossible for me to doubt, that in its present state, un-amended, the adoption of it will put Civil Liberty and the happiness of the people at the mercy of Rulers who may possess the great unguarded powers given....."<sup>23</sup>

On October 5, 1787, Lee wrote to Samuel Adams that "The corrupting nature of power, and its insatiable appetite for increase, hath proved the necessity, and procured the adoption of the strongest and most express declaration of that Residuum of natural rights, which is not intended to be given up to Society; and which indeed is not necessary to be given for any good social purpose. In a government, therefore, when the power of judging shall be for the General Welfare, which goes to every object of human legislation; and where the laws of such Judges shall be the Supreme Law of the Land: it seems to be of the last consequence to declare in most explicit terms the reservations above alluded to. So much for the propriety of a Bill of Rights as a necessary bottom to this new system....."<sup>24</sup>

Another note on October 16th, 1787 from New York to the Governor of Virginia said that "In the new constitution, the president and senate have all the executive and two-thirds of the legislative; and in some weighty instances (as making all kinds of treaties which are to be the laws of the land) they have the whole executive and legislative powers. They jointly appoint all officers, civil and military,

23 - Ballagh, op. cit., 440.

24 - Ballagh, op.cit., 444.

and they (the senate) try all impeachments, either of their own members or of the officers appointed by themselves.

Is there not a most formidable combination of power thus created in a few?"<sup>25</sup>

As an answer to "The Federalist" letters, Richard Henry Lee wrote articles signed "Federal Farmer". These were circulated all over the country.<sup>26</sup>

In the neighboring state of Maryland, Luther Martin - delegate to the national convention, left when he realized, as had Lansing and Yates, that the convention was going beyond its powers to form a new government. In a letter to the Honourable Thomas Cocke Deye, Speaker of the House of Delegates of Maryland, Martin stated that he left when he saw that most of the delegates seemed "in favour of a system which I thought it my duty to oppose."<sup>27</sup>

Thus it was through the influence exerted by these men who were opposed to the adoption of the constitution as it was sent to, the states that the so-called bill of rights was added to the constitution as the first ten amendments.

# # #

25 - Ballagh, op. cit., 450.

26 - Henry, Patrick Henry, II, 334.

27 - Farrand, Records, III, 403.